



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 26, 1992

Commissioner Burton Raiford
Texas Department of Human Services
P. O. Box 14930
Austin, Texas 78714-9030

OR92-618

Dear Commissioner Raiford:

The Texas Department of Human Services (the "department") asks whether certain information is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID # 16106.

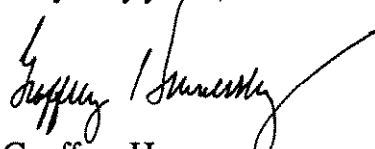
The department has received a request for the "selection packet" relating to a department managerial "job announcement." The department has furnished for our review documents consisting of job applications and performance appraisals. The department claims that portions of these records are excepted from required public disclosure by Open Records Act section 3(a)(11).

Section 3(a)(11) excepts from public disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." It is well established that the purpose of section 3(a)(11) is to protect from public disclosure advice, opinion, and recommendation used in the decisional process within an agency or between agencies. The policy underlying the section 3(a)(11) exception is that public employees should be given significant latitude in conveying to fellow employees their subjective impressions regarding official business without the chilling effect on those views which the certainty of public disclosure would impose. Open Records Decision No. 308 (1982); *see also Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.); Attorney General Opinion H-436 (1974); Open Records Decision Nos. 538 (1990); 470 (1987). Purely factual information, however, does not constitute advice, opinion, or recommendation and may not be withheld under section 3(a)(11). Open Records Decision No. 308 (1982) at 2; *see also* Open Records Decision No. 450 (1986).

You have submitted to us for review the entire requested "selection packet," which includes, *inter alia*, employment applications, handwritten notes about applicants, "Performance Evaluation" forms, and "Performance and Development Plan and Evaluation" forms. You claim that the handwritten notes in their entirety and the marked portions of the "Performance Evaluation" and "Performance and Development Plan and Evaluation" forms fall within the section 3(a)(11) exception. We agree that some of the forms contain advice, opinion, or recommendation used in the deliberative process. This information has been marked and may be withheld from required public disclosure under section 3(a)(11) of the Open Records Act. We conclude, however, that the remaining information on these forms is purely factual and therefore does not fall within the section 3(a)(11) exception. This information must be released. As regards the handwritten notes, you have not indicated, nor is it apparent on its face, that the notes constitute "inter-agency or intra-agency memorandums or letters" used in the deliberative process. Accordingly, the handwritten notes do not fall within the section 3(a)(11) exception and must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-618.

Very truly yours,


Geoffrey Hennessey
Assistant Attorney General
Opinion Committee

GH/GCK/lmm

Ref: ID# 16106

cc: Ms. Maria C. Lopez
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